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EXHIBIT B

DRAFT

Robert A. Julian (SBN 88469)
Cecily A. Dumas (SBN 111449)
BAKER & HOSTETLER LLP
600 Montgomery St., Suite 3100
San Francisco, CA 94111
Telephone: 415.659.2600
Facsimile: 415.659.2601
Email: rjulian@bakerlaw.com
Email: cdumas@bakerlaw.com

Eric E. Sagerman (SBN 155496)
David J. Richardson (SBN 168592)
Lauren T. Attard (SBN 320898)
BAKER & HOSTETLER LLP
11601 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859
Email: esagerman@bakerlaw.com
Email: drichardson@bakerlaw.com
Email: lattard@bakerlaw.com

Counsel to the Plaintiff Official Committee of Tort Claimants

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

**PG&E CORPORATION, and PACIFIC GAS
AND ELECTRIC COMPANY,
Debtors.**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

**All papers shall be filed in the Lead Case, No. 19-30088 (DM)*

**THE OFFICIAL COMMITTEE OF TORT
CLAIMANTS,**

Plaintiff,

v.

**THE PUBLIC EMPLOYEES RETIREMENT
ASSOCIATION OF NEW MEXICO; YORK
COUNTY, ON BEHALF OF THE COUNTY OF
YORK RETIREMENT FUND; CITY OF
WARREN POLICE AND FIRE RETIREMENT
SYSTEM; MID-JERSEY TRUCKING
INDUSTRY & LOCAL NO. 701 PENSION FUND,
Defendants.**

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

Adv. Pro. No.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

1 The Official Committee of Tort Claimants (the “TCC” or “**Plaintiff**”) in the above-
2 captioned chapter 11 cases (the “**Chapter 11 Cases**”) of PG&E Corp. and Pacific Gas and Electric
3 Company (collectively, the “**Debtors**” or “**PG&E**”), allege for its complaint (“**Complaint**”) for
4 declaratory judgment and injunctive relief against the lead plaintiff and named plaintiffs in the
5 action pending in the United States District Court for the Northern District of California, San
6 Francisco Division, styled *In re PG&E Corporation Securities Litigation*, Civil Action No. 3:18-
7 cv-03509-EJD (the “**Pending Action**”), as follows:

8 **NATURE OF THE ACTION**

9 1. Shortly after the catastrophic 2017 northern California wildfires (the “**North Bay**
10 **Fires**”), and 2018 Camp Fire (the “**Camp Fire**”), there was a flurry of a dozen shareholder lawsuits
11 filed, all of which seek to recover the same damages that arose from the fires in the form of billions
12 of dollars of liabilities asserted against the Debtors, which led to an incidental drop in stock price.
13 The vast majority of these lawsuits were filed as acknowledged shareholder derivative actions. The
14 Pending Action is alone in claiming that the same damages should be paid to the plaintiff
15 shareholders instead of for the benefit of the corporations.

16 2. One of the named shareholder plaintiffs in the Pending Action has filed two of these
17 shareholder lawsuits: the Pending Action in District Court pleading alleged direct shareholder
18 claims, and another pending lawsuit in state court, Case No. CGC-570820 (the “**Warren Superior**
19 **Court Action**”), that acknowledges on its face that it is a derivative lawsuit, even though it seeks
20 to recover for the Debtors’ estate the identical damages: a loss to the Debtors’ overall corporate
21 value as a result of 2017 and 2018 wildfires, which translated into an incidental drop in stock price.
22 These shareholders’ efforts to recover their stock loss as a direct claim in the Pending Action is a
23 violation of the absolute priority rule, and would improperly allow a recovery for shareholders at
24 the expense of unsecured creditors.

25 3. There is a common misconception with respect to securities litigation that where a
26 shareholder’s stock dropped in value, and there was a misrepresentation made by the company’s
27 officers that appears related, there is a direct securities claim against the company and the officers
28 under federal securities laws. But under Ninth Circuit and California Supreme Court authority,

1 “the pivotal question” to resolve whether a shareholder’s claim is direct or derivative is the nature
2 of the damages: “whether the injury is incidental to or an indirect result of a direct injury to the
3 corporation or to the whole body of its stock or property.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th
4 Cir. 1998) (distinguishing between “independent” stock loss that creates a direct claim, and stock
5 loss that is “incidental” to a corporate injury and creates a derivative claim). In *Pareto*, the Ninth
6 Circuit held that a plaintiff’s claims were derivative because his “claims were for injury to [the
7 corporation] itself, which ultimately reduced the value of the stock. In other words, the action was
8 ‘derivative ...’ This is not a theory invented by the TCC. It is California law, applied by the Ninth
9 Circuit Court of Appeals and the California Supreme Court, as it is the law in all states that adopt
10 similar standards for determining the difference between direct and derivative claims for relief.

11 4. Like the plaintiff in *Pareto*, the shareholder plaintiffs in the Pending Action seek to
12 recover damages to the corporations: tens of billions of dollars in wildfire liabilities asserted against
13 the Debtors, resulting in an incidental drop in stock price. It is the identical theory of damages that
14 has been pleaded in the Warren Superior Court Action and another ten similar shareholder lawsuits.
15 But while all of those actions have been filed as acknowledged derivative actions, the shareholders
16 in the Pending Action seek to recover those damages for their own benefit. To do so, they have
17 created a “putative class” that is not based on actual false statements, but upon their own convenient
18 dates of purchases and sales of the Debtors’ securities, when the actual damages were felt by all
19 shareholders.

20 5. Because the direct/derivative nature of a shareholder’s claim is based upon the
21 nature of the damages, a claim arising under federal securities laws “may be brought either as a
22 direct or a derivative claim.” *New York City Employees’ Ret. Sys. v. Jobs*, 593 F.3d 1018, 1022
23 (9th Cir. 2010) (emphasis added). But it cannot be both, absent minority shareholder protections
24 that do not apply here. When the City of Warren Police and Fire Retirement System filed the
25 Warren Superior Court Action as a derivative action to recover the losses incurred when the North
26 Bay Fires and Camp Fire caused billions of dollars in liabilities to be incurred by the Debtors,
27 resulting in a drop in stock value, they clearly understood that damages that are “incidental” to a
28

1 corporate injury, rather than “independent,” state a derivative claim, no matter what law is cited as
2 the basis for the claim.

3 6. For example, if a pharmaceutical company announces that it will have a new,
4 breakthrough cancer treatment on the market in six months, its stock price goes up, and then it is
5 revealed six months later that the treatment was only a sugar pill, causing the stock price to drop,
6 the shareholders may possess a classic direct securities claim because their injury is independent
7 (stock price alone) to any damage to the corporation (no injury other than its stock price).

8 7. But if shareholders buy stock in a utility during a decade of increasing risk of
9 wildfires, and then a wildfire creates tens of billions of dollars in victim damages that are asserted
10 against the utility, raising the prospect of bankruptcy and driving down the stock price, the
11 shareholders only hold a derivative claim because the drop in their stock price is “incidental” to the
12 greater damage done to the corporation. If the corporation’s directors and officers committed
13 wrongdoing that caused the greater damage to the company, the claim to recover that damage is a
14 corporate claim that belongs to the company. There is no valid legal theory to carve out a
15 percentage of that injury for the direct benefit of former shareholders, because their stock-drop loss
16 is merely incidental to the corporation’s injury.

17 8. The story that the complaint in the Pending Action tries to tell is of trusting investors
18 who were led astray by the Debtors’ false statements about its vegetation management programs,
19 which convinced the investors that the risk of wildfires was less than it actually was. But in the
20 real world, the putative class period has nothing to do with alleged false statements, but is defined
21 solely by the dates when the Former Shareholders first bought and sold their securities. In the real
22 world, the 2015 Butte Fire took place just a few months into the class period, yet this court and the
23 District Court are asked to believe that investors properly ignored an actual catastrophic wildfire
24 caused by vegetation management failures, and instead relied entirely on vague statements in press
25 releases. One of the named plaintiffs in the Pending Action did not even **start** buying the Debtors’
26 securities until **after** the Butte Fire, and sold off the last ones five months later. That is not an
27 investor trusting press releases, it is an effort to profiteer from a stock that declined after a single
28 wildfire.

1 9. Where shareholders file a lawsuit based on a chapter 11 debtor's pre-petition
2 damage, the debtor, any official committee that is granted standing, or any post-confirmation
3 trustee, may file a complaint to determine that the lawsuit asserts a derivative claim for damages to
4 the debtor, and hence is property of the estate under Bankruptcy Code section 541 that may be
5 prosecuted only by the debtor or resolution trustee as a derivative action for the benefit of creditors
6 as set forth in the plan. The proper defendants for such a lawsuit are the shareholder plaintiffs in
7 the underlying action. Such an action is ripe at any time before plan confirmation to address critical
8 issues of liability that pertain to feasibility of the plan, and after plan confirmation to confirm
9 ownership of the claims going forward.

10 10. The identical situation arose in the chapter 11 case of Touch America Holdings, Inc.,
11 the former Montana Power Company, the once-regulated electric utility in Montana. The debtor-
12 in-possession assigned its claims against directors and officers to a post-confirmation trust under
13 the terms of its plan. Prior to confirmation, the creditors committee obtained standing by stipulation
14 and filed a complaint against the directors and officers. The first amended complaint added claims
15 against shareholder plaintiffs, just like the claims pleaded here, asking the Delaware Bankruptcy
16 Court to determine that a pending securities action really asserted derivative claims that were being
17 assigned to the trust, and to enjoin that action. Even though the securities action asserted that the
18 shareholders' rights under a Montana shareholders' voting rights statute had been abrogated, the
19 Bankruptcy Court ruled in *Williams v. McGreevey (In re Touch America Holdings, Inc.)*, 401 B.R.
20 107, 129-30 (Bankr. D. Del. 2009) that the claims were nevertheless derivative claims because the
21 injury to the corporation was the cause of their stock drop. The loss in their stock value was
22 incidental to the corporation's injury, not independent. That is the exact situation that arises in
23 these PG&E Chapter 11 Cases.

24 11. By this Complaint the TCC requests entry of a judgment declaring that the six claims
25 for relief (the "**Shareholder Claims**") that are pleaded by the Former Shareholders in the Third
26 Amended Complaint (the "**Shareholder Complaint**") filed in the Pending Action—as well as the
27 same claim filed against the Debtors as proofs of claim in these Chapter 11 Cases (the
28 "**Shareholder BK Claims**")—are derivative claims belonging to the Debtors' chapter 11 estates,

1 and subject to assignment to the future Fire Victim Trust (the “**Fire Victim Trust**”) under the
2 Debtors’ pending Plan of Reorganization (the “**Plan**”). And, by this Complaint, the TCC requests
3 entry of a judgment enjoining the Former Shareholders from further litigation of the derivative
4 Shareholder Claims, as they are being assigned to the Fire Victim Trust.

5 12. Resolution of this dispute is necessary and critical to the Debtors’ plan confirmation
6 process in order to address the validity of shareholder claims asserted against the Debtors that are
7 estimated by the Shareholder Plaintiffs to reach \$2 billion, whether individual claims or a class
8 claim, as well as to address entitlement to pursue such claims post-confirmation for the benefit of
9 the victims of the North Bay Fires and Camp Fire (the “**Fire Victims**”) on whose behalf the TCC
10 acts in these cases. Whether the derivative Shareholder Claims are owned by shareholders or
11 assigned by the Debtors is critical to understanding the value that Fire Victims will receive under
12 the Debtors’ Plan. The TCC therefore requests entry of a judgment that confirms the derivative
13 nature of the Shareholder Claims and Shareholder BK Claims, and enjoins the shareholder plaintiffs
14 from further prosecution of such claims.

15 THE PARTIES

16 13. Plaintiff TCC is the Official Committee of Tort Claimants in these Chapter 11 Cases,
17 appointed on February 15, 2019, by the Office of the United States Trustee (Dkt. No. 453). The
18 TCC represents the interests of over 80,000 Fire Victims who have asserted claims against the
19 Debtors arising from the losses they suffered in the 2015, 2017 and 2018 Northern California
20 wildfires. The TCC also represents the interests of persons who assert claims against the Debtors
21 arising from the 2016 Ghost Ship Warehouse fire, but those interests are not at issue in this
22 Complaint.

23 14. On information and belief, the Public Employees Retirement Association of New
24 Mexico (“**PERA**”) is lead plaintiff in the Pending Action, and is a public employee retirement
25 system with a principal place of business in Santa Fe, New Mexico.

26 15. On information and belief, York County, on behalf of the County of York
27 Retirement Fund (“**York**”) is a named plaintiff in the Pending Action, and is a public employee
28 retirement system with a principal place of business in York, Pennsylvania.

17. On information and belief, Mid-Jersey Trucking Industry & Local No. 701 Pension Fund (“**Mid-Jersey**”) (PERA, York, Warren and Mid-Jersey are defined collectively herein as the “**Former Shareholders**”) is a named plaintiff in the Pending Action, and is a pension fund with a principal place of business in North Brunswick, New Jersey.

JURISDICTION, VENUE AND RIPENESS

18. This adversary proceeding arises under Bankruptcy Code sections 105, 362, and 541 in the Chapter 11 Cases of the Debtors. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. sections 157 and 1334. This is a core proceeding under 28 U.S.C. section 157(b)(2). The TCC consents to the Court's entry of final judgment in this proceeding.

19. Venue is proper before the Court pursuant to 28 U.S.C. sections 1408 and 1409.

20. The claims pleaded in this Complaint are ripe for determination. The Former Shareholders have filed proofs of claim against the Debtors, alleging that the Shareholder BK Claims are direct claims against the Debtors for approximately \$2 billion in damages, just as the Debtors are barreling towards plan confirmation. If the Former Shareholders are pursuing derivative claims in the Pending Action and their identical proofs of claim, as alleged in this Complaint, then they cannot assert a claim against the Debtors for damages, as the claims belong to the Debtors' estates. Thus, while the TCC has obtained standing by stipulation to be the party pursuing this Complaint on behalf of the Debtors' estates, the resolution of these alleged claims for \$2 billion represents a critical issue for Plan confirmation, and is ripe for determination at this time.

FACTUAL BACKGROUND

The Northern California Wildfires

21. In 2015, 2017 and 2018, PG&E's equipment, and its system maintenance and vegetation management practices, sparked a series of wildfires in Northern California that killed over 130 individuals, injured over 50,000 individuals, destroyed over 30,000 structures, and burned hundreds of thousands of California acreage. The Fire Victims affected by these fires suffered

1 massive injuries, including personal injury damages and property damages, and/or the loss of loved
2 ones in the fires, and/or other losses and attorneys' fees. Approximately 80,000 Fire Victims have
3 filed proofs of claim against the Debtors' estates in these Chapter 11 Cases.

4 22. The North Bay Fires and Camp Fire were not the first catastrophic wildfires caused
5 by PG&E equipment, mismanagement or oversight. But they were the first wildfires of such scale
6 that the projected damages raised the prospect of PG&E filing bankruptcy, and all existing equity
7 being wiped out. When the Camp Fire occurred in November 2018, adding billions of dollars in
8 additional damages claims to be asserted against the Debtors, and taking dozens of lives, the
9 Debtors had no other option than to file bankruptcy. On January 29, 2019 (the "**Petition Date**"),
10 the Debtors filed the above-captioned Chapter 11 Cases.

11 23. Under the Debtors' Plan, the Fire Victim Trust will receive an assignment of the
12 Debtors' fire-related claims and causes of action against third parties such as vendors, contractors,
13 consultants, and former officers and directors, such as those arising from the 2015 Butte Fire, the
14 North Bay Fires, and the Camp Fire (the "**Assigned Claims**"). The TCC is the representative in
15 these Chapter 11 Cases of the Fire Victims who will be the beneficiaries of the Assigned Claims,
16 and who have negotiated the right to receive an assignment of such claims.

17 **The Filing of Multiple Shareholder Derivative Lawsuits**

18 24. Shortly after the North Bay Fires in 2017, and continuing after the Camp Fire, there
19 was a flurry of a dozen shareholder lawsuits filed against the Debtors. All of these shareholder
20 lawsuits seek to recover the same damages that arose from the fires in the form of billions of dollars
21 of liabilities asserted against the Debtors, which led to an incidental drop in stock price, and nearly
22 all were filed as acknowledged shareholder derivative actions. Those actions include:

- 23 (a) *In re California North Bay Fire Derivative Litigation*, Case No. CGC-17-562591,
24 consolidated litigation pending in the Superior Court of the State of California,
County of San Francisco.

25 Consolidated Actions:

- 26 i. *Lentine, derivatively on behalf of PG&E Corporation, v. Williams, et al.*,
27 Case No. CGC-17-562553 (the "**Lentine Action**");
28

- 1 ii. *Firemen's Retirement Systems of St. Louis, derivatively on behalf of PG&E*
2 *Corporation and Pacific Gas & Electric Company, v. Williams, et al.*, Case
3 No. CGC-17-562591; and
- 4 iii. *City of Warren Police and Fire Retirement System, derivatively on behalf*
5 *of PG&E Corporation, v. Chew, et al.*, Case No. CGC-570820 (the
6 **"Warren Superior Court Action"**).
- 7 (b) *Blackburn, derivatively on behalf of PG&E Corporation, v. Meserve, et al.*, Case
8 No. 3:19-cv-00501, pending in the United States District Court for the Northern
9 District of California (the **"Blackburn Action"**).
- 10 (c) *Bowlinger, derivatively on behalf of PG&E Corporation and Pacific Gas &*
11 *Electric Company, v. Chew, et al.*, Case No. CGC-18-572326, pending in the
12 Superior Court of the State of California, County of San Francisco (the
13 **"Bowlinger Action"**).
- 14 (d) *Hagberg, derivatively on behalf of PG&E Corporation and Pacific Gas & Electric*
15 *Company, v. Chew, et al.*, Case No. CGC-19-573190, pending in the Superior
16 Court of the State of California, County of San Francisco (the **"Hagberg Action"**).
- 17 (e) *Oklahoma Firefighters Pension and Retirement System, derivatively on behalf of*
18 *PG&E Corporation, v. Chew, et al.*, Case No. 3:18-cv-04698, pending in the
19 United States District Court for the Northern District of California (the
20 **"Oklahoma Action"**).
21 - includes derivative claim under Section 14(a) of the Securities and
22 Exchange Act of 1934.
- 23 (f) *Williams, derivatively on behalf of PG&E Corporation and Pacific Gas & Electric*
24 *Company, v. Earley, et al.*, Case No. 3:18-cv-07128, pending in the United States
25 District Court for the Northern District of California (the **"Williams Action"**)
26 (actions (a) through (f) referred to herein as the **"Derivative Shareholder**
27 **Actions"**).
28 - includes derivative claim under Section 14(a) of the Securities and
 Exchange Act of 1934, alleging false statements inflated stock price.
- (g) *In re PG&E Corporation Securities Litigation*, Case No. 3:18-cv-03509-EJD,
 pending in the United States District Court for the Northern District of California,
 and all actions consolidated therein (defined above as the **"Pending Action"**).

Consolidated Actions:

- i. *Weston v. PG&E Corporation, et al.*, Case No. 3:18-cv-03509;
- ii. *Moretti v. PG&E Corporation, et al.*, Case No. 3:18-cv-03545;
- iii. *York County, on behalf of the County of York Retirement Fund, et al. v.*
Rambo, et al., Case No. 5:19-cv-00994.
25. Of all the above-listed shareholder lawsuits, the Pending Action is the only ongoing
lawsuit claiming that the same damages should be paid to the Former Shareholders instead of for
the benefit of the corporations.

The Filing and the Former Shareholders' Pending Action and Proofs of Claim

26. The Pending Action is a consolidated lawsuit that was filed on June 12, 2018, and was consolidated with an action filed collectively by York, Warren and Mid-Jersey, by an order of the District Court entered on May 7, 2019. The defendants include the Debtors, various former and current directors and officers, and twenty-three of the largest financial institutions in the country (collectively, the “**D&O Defendants**”).

27. On October 21, 2019, each of the Former Shareholders filed two substantially identical proofs of claim in the Chapter 11 Cases; one against each of the Debtors' respective estates (the “Former Shareholder POCs”), seeking recovery of the same damages pleaded in the Pending Action, and attaching the initial pages of the Shareholder Complaint. By an order entered February 27, 2020, the Bankruptcy Court extended the bar date for former shareholders to file similar proofs of claim asserting the same Shareholder BK Claims, raising the prospect of substantial liability added on the eve of plan confirmation.

The Damages Pleaded in the Shareholder Complaint Are Incidental to Injury to the Debtors, Not Independent of Injury to the Debtors

28. Ninth Circuit and California Supreme Court authority hold that shareholders only possess a direct claim to recover a loss in stock value if their damages were “independent” of injury to the corporation, not “incidental” to a corporate injury.

29. The direct/derivative nature of a shareholder's claim is determined by the laws of the state in which the corporation is incorporated. Under California law, an action is derivative “if ‘the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders ... An individual cause of action exists only if damages to the shareholders were not incidental to damages to the corporation.’” *Schuster v. Gardner*, 127 Cal.App.4th 305, 313 (2005) (quoting *Jones v. H. F. Ahmanson & Co.*, 1 Cal.3d 93, 106-07 (1969), and Friedman, Cal. Practice Guide: Corporations (The Rutter Group 2004) ¶ 6:604, p. 6-128.2). The term “incidental” is the determinative concept. If all shareholders experience a common drop in share price because of a larger injury to the corporation, their injury is “incidental” to the corporate damage, and their claim is derivative. In order to possess a direct

1 claim, a shareholder's loss in stock value must be "independent" of any damage to the company.
2 *Pareto v. FDIC, supra*. Where a shareholder's "claims were for injury to [the corporation] itself,
3 which ultimately reduced the value of the stock ... the action was 'derivative ...'" *Id.* Where the
4 alleged damage is "an injury that fell on every stockholder, majority and minority alike, and fell on
5 each on a per share basis," the claim is "clearly derivative." *Id.* at 700. The Ninth Circuit's position,
6 following the California Supreme Court, leaves no room for a direct claim under the circumstances
7 of this case.

8 30. Despite this binding authority, the Shareholder Complaint alleges that the Former
9 Shareholders hold direct claims against the Debtors and other D&O Defendants, but then pleads a
10 derivative damages theory by describing the North Bay Fires and Camp Fire, and alleging that as a
11 result of these fires the Debtors "will incur billions of dollars in losses for claims in connection
12 with the North Bay and Camp wildfires" (Shareholder Complaint, ¶ 80). The Shareholder
13 Complaint then details a twenty-page damages theory that ties every drop in stock price over a
14 fourteen-month period to a further liability asserted against the Debtors for the North Bay Fires or
15 Camp Fire. The first drop in stock price that results in damages under the Former Shareholders'
16 theory occurred while the North Bay Fires were still burning, as the first allegations that PG&E
17 was responsible for the fires began to emerge. Then, in paragraph after paragraph, the Former
18 Shareholders allege that the Debtors' liabilities for the North Bay Fires were realized over time, as
19 the Debtors' responsibility for each fire was theorized and then confirmed by Cal Fire over the
20 course of fourteen months, with each new liability leading to another drop in stock price.

21 31. Warren, who is a named plaintiff in the Pending Action, is also the plaintiff in the
22 action listed above and defined as the Warren Superior Court Action, which is a self-described
23 derivative shareholder lawsuit pending in California Superior Court. The allegations of damages
24 in both the Pending Action's Shareholder Complaint and the initiating complaint filed in the Warren
25 Superior Court Action seek recovery of the identical damages—wildfire liabilities asserted against
26 the Debtors in the billions of dollars which led to an incidental drop in stock prices.

32. The Pending Action's Shareholder Complaint and the initiating complaint filed in the Warren Superior Court Action, (the "**Warren Complaint**"), each contain the following substantially identical allegations of damages:

Pending Action's Shareholder Complaint Theory of "Direct" Shareholder Damages	Warren Superior Court Action Complaint Theory of "Derivative" Shareholder Damages
[On] October 12, 2017 ... the market began to understand that PG&E's safety regulation violations were likely a proximate cause of the North Bay Fires ... On this news ... PG&E's stock dropped \$4.65 per share, from a closing price of \$69.15 ... [O]n October 13, 2017, PG&E filed a Form 8-K ... [stating that] The causes of these fires are being investigated by the California Department of Forestry and Fire Protection (Cal Fire) ... If the amount of insurance is insufficient ... results of operations could be materially affected ... On these disclosures, PG&E's share price continued to decline ... [from] \$63.95 per share that day to its closing price of \$53.43 ... (Exhibit 1 at ¶¶ 328-36).	On October 13, 2017, defendants announced that Cal Fire was investigating whether PG&E equipment caused the fires ... [and] if found at fault, the Company's liability for financial losses could be above PG&E's available insurance coverage. On this news, the trading price of PG&E's common stock collapsed, falling from \$69.15 per share on October 11, 2017 to a close of \$53.43 per share ... (Exhibit 2 at ¶ 8).
On December 20, 2017 ... PG&E filed a press release on Form 8-K with the SEC titled "PG&E Announces Suspension of Dividend, Citing Uncertainty Related to Causes and Potential Liabilities Associated with Northern California Wildfires ... On this news, PG&E's share price fell \$6.62 ... to close at \$44.50 ... (¶¶ 339-40);	[O]n December 20, 2017, defendants stunned shareholders again by announcing that the Company was suspending its cash dividend due to "uncertainty related to causes and potential liabilities associated with the extraordinary October 2017 Northern California wildfires." On this news, the trading price of PG&E stock collapsed again, falling from \$51.12 per share ... to \$44.50 per share ... (¶ 8);
On May 25, 2018, Cal Fire issued a press release announcing the cause of four wildfires in Butte and Nevada counties ... caused by trees coming into contact with power lines ... On this news, PG&E's share price fell ... 5.19%, to close at \$42.34 on May 29, 2018 ... (¶¶ 347-48);	On May 25, 2018, Cal Fire announced that four of the 2017 Northern California Wildfires were in fact caused by trees coming into contact with PGE's power lines ... Cal Fire's reported findings caused PG&E's share price to decline an additional 5.2% , closing at \$42.34 per share on May 29, 2018 ... (¶¶ 44-45);
[On] June 11, 2018, ... PG&E filed a Current Report on Form 8-K ... [which] admitted that the Defendants expected to "record a significant liability for losses associated with" at least 14 of the North Bay Fires ... Following these disclosures, PG&E's share price fell ... to close at \$39.76 ... (Exhibit 1 at ¶¶ 357-58).	On June 11, 2018 ... the Company disclosed that ... PG&E Corporation and the Utility currently expect that they will record a significant liability for losses associated with" all but two of the 16 fires ... On this news, the trading price of PG&E stock declined again, falling to \$39.76 per share ... (Exhibit 2 ¶¶ 10-11).

1 33. The damages theory is virtually identical in both the Pending Action (asserted as a
2 direct action) and the Warren Superior Court Action (asserted as a derivative action), stating **all**
3 **damages** as injuries to the Debtors that led to an incidental drop in stock prices.

4 34. Warren has appeared as plaintiff in two separate shareholder actions filed against
5 the Debtors, one that acknowledges on its face that it is derivative, and one that purports to be
6 asserting direct claims. Warren will answer that the Warren Superior Court Action is derivative
7 because it asserts common law claims, while the Pending Action is direct because it asserts
8 securities law claims. But this is false. The direct/derivative nature of a claim is not determined
9 by the law on which the claim is based, but by the nature of the damages. “[T]he pivotal question
10 is whether the injury is incidental to or an indirect result of a direct injury to the corporation or to
11 the whole body of its stock or property.” *Pareto*, 139 F.3d at 699. Both lawsuits seek to recover
12 the identical damages—damage to the corporation that had an incidental impact on share price.
13 Both lawsuits are derivative.

14 35. Each of the complaints that have been filed in the other Derivative Shareholder
15 Actions also asserts the same theories advanced in the Shareholder Complaint, including the same
16 allegedly “false statements,” and the same drops in stock prices caused by the North Bay and Camp
17 Fire liabilities. The complaint filed in the Hagberg Action, just like the Shareholder Complaint,
18 pleads the same “false statements,” such as that PG&E was “stepping up” vegetation management,
19 that its vegetation management practices were “in compliance with relevant laws,” and that it was
20 doubling vegetation management budgets, and asserts as a description of damages that, because of
21 the Camp Fire, “PG&E’s stock price plummeted by over 50%.” Yet it is filed as a self-described
22 derivative action.

23 36. The complaint filed in the Bowlinger Action also pleads the same “false statements,”
24 including that PG&E was “stepping up” vegetation management, that its vegetation management
25 practices complied with “relevant laws,” and that it had “doubled” its vegetation management
26 budget, and pleads as damages that “PG&E’s stock was down almost 47% year-to-date, almost
27 exclusively due to liabilities from the wildfires.” Yet it is filed as a self-described derivative action.
28

1 37. The complaint filed in the Lentine Action similarly alleges a series of “false and
2 misleading statements,” made by PG&E, and pleads that, in the days following the North Bay Fires,
3 “when the revelations about Defendants’ conduct began to come to light,” PG&E stock fell from
4 \$69.15 per share on October 11, 2017 to close at \$57.72 per share on October 13, 2017. Yet it is
5 filed as a self-described derivative action.

6 38. Three of the other shareholder actions that are pending—the Oklahoma, Williams
7 and Blackburn Actions—were filed in District Court, like the Pending Action. Even though they
8 were filed as acknowledged derivative lawsuits, on their face, their allegations are so closely related
9 to the Pending Action that they have been deemed “related” and assigned to the same District Court
10 courtroom.

11 39. For example, the complaint filed in the Oklahoma Action states in its opening
12 paragraph that the action was filed “derivatively, and on behalf of Nominal Defendant PG&E
13 Corporation,” even though it pleads claims arising under the Securities Exchange Act of 1934, as
14 well as a claim for breach of fiduciary duties. Like the Shareholder Complaint, the complaint filed
15 in the Oklahoma Action alleges an incidental injury to shareholders as a result of the wildfires. For
16 example, it alleges in Paragraph 58 that the “financial impact” from the wildfires was so great by
17 December 20, 2017, just two months after the North Bay Fires, that the Debtors “determined to
18 suspend quarterly cash dividends on both the Corporation’s common stock, beginning with the
19 fourth quarter of 2017, and the Utility’s preferred stock, beginning with the three-month period
20 ending January 31, 2018, due to potential liabilities associated with the Northern California Fires.”
21 (*Id.* at ¶ 58). The Oklahoma Complaint, like the Shareholder Complaint, pleads misrepresentations
22 by the PG&E defendants pertaining to the Debtors’ fire mitigation activities and other risk factors.
23 (*Id.* at ¶¶ 110-113). Despite these overwhelming similarities, the Oklahoma Complaint was filed
24 as an acknowledged derivative action.

25 40. Similarly, the complaint filed in the Blackburn Action states in Paragraph 1 that it
26 is a “shareholder derivative action on behalf of nominal defendant PG&E,” and further alleges that
27 the defendants “made false statements to shareholders regarding the Company’s operational safety
28 and integrity,” and that as a “direct and proximate result” of such conduct, among other actions,

1 PG&E had “been and is being further substantially damaged,” for which the defendants were “liable
2 to PG&E.” The nature of the damages pleaded in the Blackburn complaint is the same damages
3 pleaded in the Shareholder Complaint, arising from “two massive wildfire episodes in 2017 and
4 2018 that devastated parts of Northern California, exposing the Company to yet more huge damage
5 claims.” (Blackburn Complaint at ¶ 8). Despite these overwhelming similarities, the Blackburn
6 Complaint was filed as an acknowledged derivative action.

7 41. The shareholders who have filed all related Shareholder Derivative Actions (even
8 Warren) understand that an action to recover damages that are “incidental” to an injury to the
9 corporation, not “independent” of any injury to the corporation, is a derivative lawsuit. For that
10 reason, the other shareholder lawsuits have been filed as derivative actions on their face. The
11 damages sought in all of the lawsuits are identical, except solely for the fact that some pertain only
12 to the North Bay Fires damages, some pertain solely to the Camp Fire damages, and some address
13 both sets of fires. But only the Shareholder Complaint in the Pending Action asks that those
14 damages be paid over to former shareholders instead of to the Debtors.

15 **The Putative Class Period Reflects an Improper Effort to Create a “Direct” Subclass of a**
16 **Derivative Action**

17 42. A shareholder plaintiff cannot create a direct claim by creating a false class based
18 upon convenient dates of purchase or sale, rather than the alleged breaches of a specific duty. But
19 the Former Shareholders have done exactly that in an effort to transform a derivative action into
20 the appearance of a direct action. Despite allegations in the Shareholder Complaint, the putative
21 class period is not based upon the timing of false statements made by the Debtors—the Debtors had
22 been making promises about how great their vegetation management program was for years and
23 years prior—but is based upon the convenient dates of when these four named plaintiffs bought
24 and sold their securities. Attachments A-D to the Shareholder Complaint are the Certifications of
25 Named Plaintiff Pursuant to Federal Securities Laws, detailing each of the Former Shareholders’
26 dates of acquisition and sale of the Debtors’ securities. The start of the putative class period, April
27 29, 2015, coincides with the first securities purchase by a named plaintiff (Mid-Jersey, Dkt. 121-3,
28 page 4 of 4), and the end of the period, November 15, 2018, coincides with the last sale of securities

1 by a named plaintiff (York, Dkt. 121-2, p. 3 of 3). The Former Shareholders have done exactly
2 what has been rejected by California courts—created a “subset” of shareholders by the dates of
3 their own acquisitions in order to create the appearance that they hold separate direct claims, when
4 the injury was actually felt by all shareholders. *Schuster*, 127 Cal. App. 4th at 314.

5 43. One of the named plaintiffs, Mid-Jersey, did not even start purchasing the Debtors’
6 securities until after the 2015 Butte Fire, and then engaged in a five-month process of buying and
7 selling the securities as the securities continued to fluctuate. (Dkt. 121-4). The Shareholder
8 Complaint asks this Court to believe that the Former Shareholders were trusting investors who
9 relied on vague press releases. But meanwhile, in the real world, just over one year prior to the
10 Putative Class Period, Governor Brown issued a statewide declaration of emergency to address the
11 state’s record drought, noting that the “risk of wildfires across the state [was] greatly increased.”
12 On September 9, 2015, just a few months into the Putative Class Period, the Butte Fire ignited,
13 exposing the Debtors to massive potential liabilities, and was quickly blamed on PG&E’s
14 vegetation management failures. And on October 30, 2015, Governor Brown declared a second
15 statewide state of emergency to address the increased wildfire risk caused by record drought
16 conditions and an unprecedented die-off of trees. No reasonable investor could have invested in
17 PG&E securities during the Putative Class Period based upon assurances of the Debtors that were
18 mere puffery. No reasonable investor could have believed that corporate assurances of increased
19 efforts to mitigate against wildfires could be taken as an assurance that there would never be the
20 most destructive wildfires in California history that would decimate the Debtors’ corporate value.
21 And no reasonable investor could have started purchasing the Debtors’ securities **after** the Butte
22 Fire, yet have relied on vague statements in press releases while acting in ignorance of actual
23 catastrophic events in the real world. Yet **nearly all** of the Former Shareholders’ purchases of
24 securities of the Debtors—even the purchases of the Former Shareholders who had bought some
25 securities before the Butte Fire—were made **after** the Butte Fire, and after Governor Brown’s two
26 declarations of emergency.

27 44. Against this backdrop of actual wildfires, declarations of emergency, and a publicly
28 acknowledged growing wildfire threat—all of which preceded nearly all of the Former

1 Shareholders' securities purchases—the Former Shareholders ask the Courts to believe that they
2 properly sat back and relied on puffery and truthful statements in the Debtors' press releases as
3 proof that they could expect their stock value to remain unimpacted by potential wildfires. The
4 Debtors' mismanagement clearly gives rise to a derivative claim against the D&O Defendants for
5 the damages caused to the Debtors' corporate value by the North Bay Fires and Camp Fire. But
6 there is no direct shareholder claim based upon alleged "false statements," for damages that are
7 merely incidental to the larger corporate injury.

8 45. The entire basis for the Former Shareholders' insistence that they hold direct claims
9 is the allegations of nineteen "false statements" pleaded in the Shareholder Complaint. The purpose
10 of these allegations is to attempt to state claims under the federal securities acts—assuming the
11 Former Plaintiffs could satisfy the standard for "independent" damages, or make new law on this
12 issue—but the allegations fail to meet the necessary standard. Not only do these statements fail to
13 conform to the Putative Class Period, as they had been standard statements made by the Debtors
14 for years, they are also not statements that are actionable under federal securities laws. In order to
15 be actionable, a misrepresentation must meet a "fraud on the market" standard, rather than be mere
16 "puffery" that is typical in public relations documents. No reasonable investor relies on statements
17 that are vague, or "puffery," rather than definitive projections about future performance.

18 46. For example, "Misstatement No. 1" in the Shareholder Complaint is the statement
19 made by the Debtors' then-President on April 29, 2015, kicking off the Putative Class Period. The
20 statement was that the Debtors were "stepping up our vegetation management activities to mitigate
21 wildfire risk and improve access for firefighters." (Shareholder Complaint at ¶ 194). The
22 Shareholder Plaintiffs allege that this statement was "materially false and/or misleading" because
23 PG&E "underspent its vegetation management budget in both 2014 and 2015." (*Id.*, at ¶ 195). Yet
24 they acknowledge in the same paragraph that this reflected a budgetary increase of 2.4% in 2015
25 over 2014, which was twice the rate of inflation. And, the portion of the 2015 budget that was
26 unspent represents less than 0.02% of the annual budget, a typical underspend for any corporation
27 that is careful to avoid going overbudget. PG&E's statement that it was "stepping up" its vegetation
28 management activities did not promise a specific budgetary increase. And it did not promise that

1 every budgeted penny would be spent beyond 99.98% of the annual budget. It was not a false
2 statement. Rather, it is a statement that has been completely misrepresented in the Shareholder
3 Complaint to create the appearance of a false statement on the date that just happens to be the first
4 date when one of the Former Shareholders purchased their first PG&E securities. PG&E's
5 spending in 2015 did increase 2.5% over 2014. It is the Former Shareholders' representation of
6 this statement that is false, not the statement itself. This is not "fraud on the market." It is "puffery"
7 at most, misrepresented in the Shareholder Complaint's allegations. If an investor relied on this
8 statement to believe that they could invest in PG&E stock without a risk of wildfire damages, in
9 the midst of a statewide state of emergency, they were a careless investor.

10 47. The Shareholder Complaint's "Misstatement No. 2" is the allegation that a report
11 dated October 16, 2015—within the class period—"falsely assured investors" that each year, PG&E
12 "in consultation with utility arborists and foresters, inspects every mile of power line in our service
13 area for public safety and electric reliability." (*Id.*, ¶ 197). Yet Two years earlier, in PG&E's
14 *Corporate Responsibility and Sustainability Report*, dated September 17, 2013, PG&E made the
15 substantially identical representation, to the effect that:

16 Each year, PG&E's Vegetation Management department inspects every
17 mile of power line in our service area for public safety and electric
18 reliability. The work is performed by 350 consulting utility arborists and
foresters and more than 650 line clearance contractor crews.

19 48. The above example is not isolated, but rather each of the false statements alleged in
20 the Shareholder Complaint is identical or comparable to statements that the Debtors had been
21 making for years. The fact that PG&E made the substantially identical statement two years before
22 the purported class period does not necessarily mean that it was a truthful statement, but it means
23 that there was no definitive "class period" during which misstatements were misleading potential
24 shareholders into purchasing inflated stock. Rather, the "class period" merely coincides with the
25 period when the Former Shareholders acting as Lead and Name Plaintiffs in the Shareholder Action
26 happened to be buying and selling PG&E securities, and is nothing more than an impermissible
27 attempt to create a "subset" of shareholders based upon the dates of their acquisitions, in an effort
28

1 to carve out damages for themselves that were actually experienced by shareholders as a whole.
2 *Schuster*, 127 Cal. App. 4th at 314.

3 49. The Former Shareholders' allegations of "false statements" do not create a claim
4 where the injury was to the corporation. As the Ninth Circuit has held, "vague allegations about
5 misrepresentations that caused [the plaintiff shareholder] to support the unsuccessful merger
6 attempt and initiation of a receivership" were still derivative claims because "his only injury from
7 those misrepresentations was the devaluation of his stock when Barbary Coast was taken over by
8 the FDIC." *Pareto*, 139 F.3d at 700.

9 50. Because the direct/derivative nature of a shareholder's claim is based upon the
10 nature of the damages, a claim arising under federal securities laws may be brought either as a
11 direct or a derivative claim. But it cannot be both to recover the same damages. The same
12 "conduct" can lead to both direct and derivative damages. But the same damages cannot support
13 separate direct and derivative claims.

14 51. Just like the plaintiff in *Pareto*, the plain and unambiguous allegations in the
15 Shareholder Complaint demonstrate that the Former Shareholders have pleaded derivative claims
16 that "were for injury to [the corporation] itself, which ultimately reduced the value of the stock."
17 *Id.*, 139 F.3d at 699.

18 52. Throughout the Shareholder Complaint, the Former Shareholders allege that the
19 value of their stock dropped as the liabilities that the Debtors faced for the North Bay Fires and
20 Camp Fire increased, and because the liabilities against the Debtors increased. But in an effort to
21 avoid the obvious conclusion that their damages state a derivative claim belonging to the Debtors'
22 estate, the Former Shareholders repeatedly phrase their allegations to suggest that it was not the
23 liability itself that led to the stock drop, but that the stock declined because of the Debtors'
24 "disclosures" about their liabilities (§ 384), or because the liabilities for the fires had been
25 "concealed by PG&E's false and misleading statements and omissions" (§ 388), as if the future
26 liabilities were known information that was concealed in 2015 and 2016.

27 53. Wordsmithing does not create a claim that does not otherwise exist under the
28 pleaded facts. The damages that are pleaded in the Shareholder Complaint are damages to the

Debtors that translated into a loss in corporate value and an incidental loss in stock price. The Former Shareholders' personal damages are "incidental" to the Debtors' loss, not "independent," by their own allegations, and by the facts.

FIRST CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS FOR DECLARATORY RELIEF

54. The TCC incorporates paragraphs 1-53 of this Complaint.

55. The Shareholder Claims pleaded by the Former Shareholders in the Shareholder Complaint filed in the Pending Action are classic derivative claims that seek to recover damages that are incidental to the damages that the North Bay Fires and Camp Fire caused to Fire Victims and their insurance companies, who in turn have asserted claims against the Debtors' estate exceeding \$25 billion. The unveiling of evidence showing that the Debtors were liable for the wildfires, and would face such mounting liabilities, caused an incidental drop in the value of the Debtors' stock.

56. Under California law, the Former Shareholders cannot pursue claims against the Debtors or the D&O Defendants unless their damages are independent of the damages suffered by the Debtors' corporate enterprise. But the damages theory pleaded in the Shareholder Complaint pleads only incidental damages.

57. The Shareholder claims are derivative of corporate claims against the Debtors' former directors and officers, and other defendants named therein, and are therefore property of the Debtors' estates in the above-captioned cases pursuant to 11 U.S.C. § 541, and fall under the exclusive jurisdiction of this Court pursuant to 28 U.S.C. § 1334(e).

58. A declaration of the Court is necessary and appropriate to determine the respective rights of the Debtors, the TCC, the Fire Victims represented by the TCC, the future Fire Victim Trust, and the Former Shareholders, in the derivative claims that are pleaded in the Shareholder Complaint, and are identical to claims pleaded in related pending derivative actions.

SECOND CLAIM FOR RELIEF
AGAINST ALL DEFENDANTS, FOR DECLARATORY RELIEF

59. The TCC incorporates paragraphs 1-58 of this Complaint.

1 60. The Shareholder BK Claims, and any further individual proofs of claim asserting
2 the same theory of damages, are derivative claims that are property of the Debtors' estates in these
3 Chapter 11 Cases. The Former Shareholders may not assert derivative claims against the Debtors'
4 estates in these Chapter 11 Cases, as derivative claims may only be asserted by or on behalf of the
5 Debtors (or their assignee) for the benefit of the estate or its creditors (or assignee), not **against** the
6 Debtors.

7 61. The Debtors' proposed Plan provides that the Assigned Claims, which include the
8 derivative Shareholder BK Claims by definition, will be assigned to the Fire Victim Trust upon the
9 effective date of the Plan.

10 62. A declaration of the Court is necessary and appropriate to determine the respective
11 rights of the Debtors, the TCC, the Fire Victims represented by the TCC, the future Fire Victim
12 Trust, and the Former Shareholders, in the derivative Shareholder BK Claims.

13 **THIRD CLAIM FOR RELIEF**

14 **AGAINST ALL DEFENDANTS, FOR INJUNCTIVE RELIEF**

15 63. The TCC incorporates paragraphs 1-62 of this Complaint.

16 64. The Shareholder Claims are derivative of corporate claims against the Debtors'
17 former directors and officers, and other defendants named therein, and are therefore property of the
18 Debtors' estates in the above-captioned cases pursuant to 11 U.S.C. § 541, and fall under the
19 exclusive jurisdiction of this Court pursuant to 28 U.S.C. § 1334(e).

20 65. The Debtors' proposed Plan provides that the Assigned Claims, which include the
21 Shareholder Claims by definition, will be assigned to the Fire Victim Trust upon the effective date
22 of the Plan, for prosecution by the Fire Victim Trust for the benefit of all Fire Victims. The
23 Assigned Claims represent substantial and valuable consideration that the TCC bargained to obtain
24 from the Debtors under the Debtors' Plan. The Former Shareholders' efforts to litigate the
25 derivative Shareholder Claims for their own benefit threaten to deprive the Fire Victim Trust, and
26 therefore the Fire Victims, of substantial recoveries that it is their right to receive, in violation of
27 the absolute priority rule.
28

66. The Former Shareholders have not made any demand upon the Debtors for leave to pursue derivative claims against the D&O Defendant on behalf of the Debtors' estates.

67. The Former Shareholders should be enjoined from any further actions to prosecute the Shareholder Claims and the Shareholder BK Claims, each of which are derivative, or any further prosecution of the Pending Action in which the Shareholder Claims are asserted, pursuant to 11 U.S.C. § 105, in order to protect the value of these claims which are property of the Debtors' estates, to be assigned to the Fire Victim Trust, for the benefit of Fire Victims.

PRAYER

WHEREFORE, the TCC respectfully requests the Court enter Judgment against the defendant Former Shareholders, as follows:

- (a) Judgment declaring the Shareholder Claims are derivative corporate claims and not direct shareholder claims, and therefore are property of the Debtors' estates under 11 U.S.C. section 541, and under the jurisdiction of this Court in these Chapter 11 Cases pursuant to 28 U.S.C. section 1134(e);
- (b) Judgment declaring that the Shareholder BK Claims filed in the Chapter 11 Cases are the same derivative claims pleaded against the Debtors by the Former Shareholders in the Pending Action, and therefore are property of the Debtors' estates under 11 U.S.C. section 541, and under the jurisdiction of this Court in these Chapter 11 Cases pursuant to 28 U.S.C. section 1134(e);
- (c) Judgment preliminarily and permanently enjoining the Former Shareholders from further prosecution of the Shareholder Claims, the Shareholder BK Claims, and the Pending Action pursuant to 11 U.S.C. sections 105(a) and 362(a)(3);
- (d) Costs of suit herein; and
- (e) Any other relief that the TCC requests in open court or in a paper filed in Court, or that the Court finds is just or reasonable.

1 Dated: _____, 2020

2 BAKER & HOSTETLER LLP

3 By: /s/
4 Robert A. Julian
5 Cecily A. Dumas
6 David J. Richardson

7 *Counsel to the Plaintiff Official Committee of*
8 *Tort Claimants*